be given a construction in accord with common usage. Such a strained construction of the word permits the promisor to obtain relief against his own lack of foresight. Although actually intending to pay for whatever suggestions of value the plaintiff may make, he can refuse to pay, if, when the suggestions are received, he finds that, had he been more alert himself, he might have been the author of them. Yet it is elementary that a court will not permit the adequacy of consideration to be questioned so long as it is regarded at the time of the making of the contract as the equivalent of the promise. *Haigh* v. *Brooks,* 10 A. & E. 309. Furthermore the actual value of the information imparted in the principal case is a cogent argument in favor of applying the ordinary rules of construction and the ordinary laws of consideration to "information" and treating it as sufficient, whether composed of commonly known ideas or not, if actually given as the equivalent of the promise.

CONTRACTS — SUBSTANTIAL PERFORMANCE OF CONDITION PRECEDENT. — P agreed to build a residence for D, final payment to be preceded by architect's certificate. Specifications for plumbing work called for all wrought iron pipe to be well galvanized, lap welded, of the grade known as standard pipe of "Reading" manufacture. Nine months after the work was finished, but before final payment, D discovered that some of the pipe used was of other than "Reading" manufacture. The departure from specifications was due to unexplained fault of a subcontractor. The pipe used was equal in every way to "Reading" pipe. Architect's certificate was refused until the deviation from the contract should be remedied, which would involve great expense. P brought action for balance due. *Held,* allowance for breach should be not the cost of replacement, but the difference in value which would be nominal. *Jacob & Youngs* v. *Kent,* (N. Y., 1921), 129 N. E. 889.

The rule of substantial performance has been variously stated but in essence is to the effect that the breach must not be such as to interfere seriously with the contract purpose. *Anderson* v. *Pringle,* 79 Minn. 433. In the principal case it is hard to perceive any purpose, reasonable or unreasonable, which was defeated by the absence of the "Reading" trade-mark. The breach must not be fraudulent, willful, or intentional; the contractor must make an honest attempt to perform exactly. *Ashley* v. *Henahan,* 56 Ohio St. 559. But one case has been found in which negligence alone has been held to preclude recovery, and in that case the entire contract was negligently performed. *John R. Carpenter Co.* v. *Ellsworth,* 136 N. Y. Supp. 108. With due deference to the dissenting opinion in the instant case, which was based chiefly upon P's negligence as constituting bad faith, it is submitted that in the great majority of cases where contracts have been held substantially performed the breaches have been due to negligence. The inference would seem almost unavoidable that in performing a contract including thousands of specifications the contractor has made an honest effort if he has failed in only one detail and that failure involving no benefit to himself. The allowance to be made for the breach, as sometimes stated, is the amount required

to put the work in the condition the contract called for. *Ashley* v. *Henahan, supra.* More often it is said that the defendant shall be allowed full compensation for all damages suffered. *Aetna Iron & Steel Works* v. *Kossuth County,* 79 Ia. 40. In many cases the *quantum* of allowance would be the same. But in others, as in the principal case, where the expense of remedying the breach is decidedly out of proportion to the good attained, the rule of damages becomes vital. To apply the strict rule would be to admit the doctrine of substantial performance in words but deny it in substance. For full discussion see 2 WILLISTON ON CONTRACTS, § 842, and 24 L. R. A. (N. S.) 327.

EASEMENTS—EXTINGUISHMENT BY VOLUNTARY DESTRUCTION OF SERVIENT TENEMENT.—In 1852 the owners of adjacent lots constructed thereon a three-story building having a common entrance, stairways, and landings as sole means of access to the upper stories. Petitioner (for registration of land title), who has derived title to one of the lots, now proposes to remove his part of the building and rebuild without provision for continuing the existing access to the respondent's part. *Held,* although respondent has an easement through petitioner's building, gained by prescription, the easement may be extinguished by the voluntary destruction of the servient tenement. *Union Nat. Bank of Lowell* v. *Nesmith,* (Mass., 1921), 130 N. E. 251.

It is well settled that destruction of the servient tenement without fault of the owner extinguishes the easement. *Shirley* v. *Crabb,* 138 Ind. 200. That voluntary destruction has the same effect appears rather startling. The majority holding in the instant case is based on *dicta* in *Hubbell* v. *Warren,* 8 Allen 173, and *Cotting* v. *City of Boston,* 201 Mass 97, and the court's finding as to the intentions of the parties, viz., that the right should remain only so long as each party should desire to maintain his part of the building. It may be doubted seriously if the parties intended any such speculation. Some reasonable men, at least, would not care to leave the sole means of access to two-thirds of a building to the pleasure of an adjoining land owner. In the principal case, perhaps, no great loss was suffered by the respondent because of the age of the building, but the result would be the same apparently if the building were newly constructed. If the court had found for the respondent in respect to the intended duration of the easement the somewhat similar case of *Adams* v. *Marshall,* 138 Mass. 228, would indicate the likelihood of the respondent getting money damages rather than equitable protection of his easement. Seemingly the best explanation of the case lies in the settled hostility of the Massachusetts courts toward easements in structures. *McKenna* v. *Eaton,* 182 Mass. 346; *Walker* v. *Stetson,* 162 Mass. 86; *Allen* v. *Evans,* 161 Mass. 485.

EASEMENTS—SCOPE OF—RIGHTS IN ICE ON MILL-POND.—Defendant had a right to flowage over the plaintiff's land. Plaintiff had been accustomed to harvesting the ice forming thereon. The defendant with malice and with the sole intent of preventing the plaintiff from harvesting the ice opened the